IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 6830 of 2007(K)

PETITIONERS:

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1. **P.S.RAMACHANDRAN,**
   FLAT NO.G2, DOOR NO.29/2295 A-2,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

2. **VIJAY LAL, FLAT NO.G3, DOOR NO.29/2295**
   A-5, AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

3. **ACHUTHAN UNNI.K.,**
   FLAT NO.G4, DOOR NO.29/2295 A-4,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

4. **MRS.VIJAYAM MOHAN NAIR,**
   FLAT NO.G5, DOOR NO.29/2295 A-3,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

5. **MRS GEETHA UNNITHAN,**
   FLAT NO.102, DOOR NO.2295 A-7,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

6. **VENKATESH NATARAJAN,**
   FLAT NO.103, DOOR NO.29/2295 A-8,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

7. **MRS.MALIKA CHANDRASEKHARAN,**
   FLAT NO.104, DOOR NO.29/2295 A-9,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

8. **K.SALVADY,**
   FLAT NO.105, DOOR NO.29/2295 A-10,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

9. **MRS.SUBHADRA HARIKRISHNAN,**
   FLAT NO.108, DOOR NO.29/2295 A-13,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

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10. MRS.SAROJA RABINDRANATH,
FLAT NO.109, DOOR NO.29/2295 A-12,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

11. MRS.SAROJA DEVI,
FLAT NO.201, DOOR NO.29/2295 A-16,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

12. S.A.NARAYANAN, FLAT NO.204,
DOOR NO.29/2295 A-19, AISWARYA FLAT,
CHAMBAKKARA, KOCHI.

13. MRS.VIDYA RAMANAN,
FLAT NO.208, DOOR NO.29/2295 A-23,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

14. HARIHARAN DHANDAPANI,FLAT NO.209,
DOOR NO.29/2295 A-22, AISWARYA FLAT,
CHAMBAKKARA, KOCHI.

15. MRS.LATHA PADMANABHAN,
FLAT NO.210, DOOR NO.29/2295 A-21,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

16. K.SASIVARMA,
FLAT NO.304, DOOR NO.29/2295 A-29,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

17. MRS.SANTHA VISWANATHAN,
FLAT NO.305, DOOR NO.29/2295 A-30,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

18. C.ARAVIND BABU,
FLAT NO.306, DOOR NO.29/2295 A-33,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

19. MRS.PRIYA HARIHARAN,
FLAT NO.308, DOOR NO.29/2295 A-32,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

WPC.NO.6830/2007 K

RESPONDENTS:
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1. STATE OF KERALA,
   REPRESENTED BY SECRETARY (TAXES),
   TRIVANDRUM.

2. THE TAHSILDAR,
   KANAYANNUR TALUK,
   ERNAKULAM.

3. MRS.PREMA RAMACHANDRAN,
   FLAT NO.G1, DOOR NO.29/2295 A-1,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

4. C.M.CIDDAR,
   FLAT NO.101, DOOR NO.29/2295 A-6,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

5. MRS.REKHA BALA,
   FLAT NO.106, DOOR NO.29/2295 A-15,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

6. U.V.S.MENON,
   FLAT NO.107, DOOR NO.29/2295 A-14,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

7. V.SUNDAR,
   FLAT NO.110, DOOR NO.29/2295 A-11,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

8. S.R.KRISHNAN,
   FLAT NO.202, DOOR NO.29/2295 A-17,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI.

9. VENKITACHALAM,
   FLAT NO.203, DOOR NO.29/2295 A-18,
   AISWARYA FLAT, CHAMBAKKARA, KOCHI.

10. MRS.N.T.SEETHALAKSHMI,
    FLAT NO.205, DOOR NO.29/2295 A-20,
    AISWARYA FLAT, CHAMBAKKARA, KOCHI.

11. A.SREEDHAR,
    FLAT NO.206, DOOR NO.29/2295 A-25,
    AISWARYA FLAT, CHAMBAKKARA, KOCHI.

12. MRS.HEMA RAVEENDRAN,
FLAT NO.207, DOOR NO.29/2295 A 24,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

13. P.R.RAMACHANDRAN,
FLAT NO.301, DOOR NO.29/2295 A-26,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

14. B.MURALIDAS,
FLAT NO.302, DOOR NO.29/2295 A-27,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

15. K.S.RAMAMOORTHY,
FLAT NO.303, DOOR NO.29/2295 A-28,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

16. MURALIDHARAN,
FLAT NO.307, DOOR NO.29/2295 A-31,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.6830 of 2007-K

Dated this the Ist day of March, 2007

JUDGMENT

The petitioners are aggrieved by Ext.P12 proceedings and and consequential order of assessment issued in the prescribed form and also Ext.P12 (b) demand notice. Against those orders, the petitioners have a right of appeal before the Revenue Divisional Officer. But, they submit, the appeal is futile as the appellate authority will be bound by Exts.P9 and P10 Circulars issued by the Government concerning the assessments. They have also pointed out that in similar cases this court has directly interfered without relegating the affected persons to invoke the appellate remedy.

2. The fact that this court has interfered with certain orders without relegating the parties to invoke the appellate remedy does not mean that it should interfere with all the matters. In taxation matters when there are appellate remedy, the well settled position of law is that a writ petition should not be entertained, unless the assessee has exhausted the statutory remedies available. But, the contention of the petitioners is that Exts.P9 and P10 has to be accepted while making assessments. The concerned authorities are discharging quasi-judicial functions. While discharging quasi-judicial

functions, they should not be fettered by administrative instructions or orders, issued by superior officers. It has been so held by the Apex Court as early as in R.Rajagopala Vs. S.T.A. Trubunal (1964 in AIR 1964 SC 1573). The relevant portion of the said judgment reads as follows:

> "In interpreting S.43A, we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function the Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial authority and the presence of such letters would make the exercise of such authority completely in-consistent with the well-accepted notion of judicial process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the principles which have to be followed by the Tribunals in dealing with the said matters. The scope of

> the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position is so well established that we are reluctant to hold that in enacting S.43A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power. In fact, such had been the intention of the Madras Legislature and had been the true effect of the provisions of S.43A. S.43A itself would amount to an unreasonable contravention of fundamental rights of citizens and may have to be struck down as unconstitutional. That is why a the Madras High Court in dealing with the validity of S.43A purported to do was to clothe the Government with authority to issue directions of an administrative character and nothing more. It is somewhat unfortunate that though judicial decisions have always emphasis this aspect of the matter, occasion did not arise so long to consider the validity of the Government order which on the construction suggested by the Respondent would clearly invade the domain of quasi-judicial administration."

Therefore, it is declared that Exts.P9 and P10 are unenforceable

and the appellate authority shall not refer them or guide by them. Subject to the above, the writ petition is closed without prejudice to the rights of the petitioners to move the appellate forum.

K.BALAKRISHNAN NAIR, JUDGE.

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